

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

12 CV 8865

ERROL IRVING

(In the space above enter the full name(s) of the plaintiff(s).)

-against-

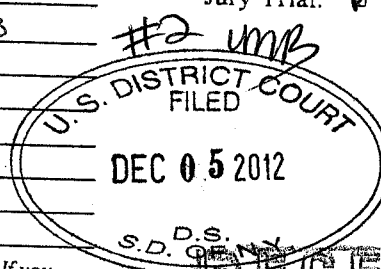
COMPLAINT

under the

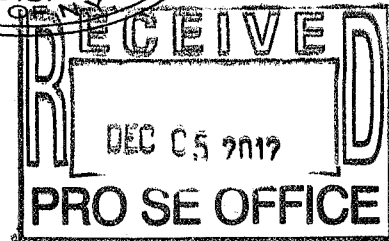
Civil Rights Act, 42 U.S.C. § 1983
(Prisoner Complaint)

NEW YORK CITY/CITY OF NEW YORK et al
DETECTIVE KAREN MACKEY #2267 Tlx # 904550
DETECTIVE JOSEPH CALABRESE # 4148
DETECTIVE ANTHONY SEGUINOT # 5058
P.O. ANICIA JOSEPH #25000

Jury Trial: ☒ Yes ☐ No
(check one)



(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Part I. Addresses should not be included here.)



I. Parties in this complaint:

- A. List your name, identification number, and the name and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff Name ERROL IRVING
ID # 141 11 01791
Current Institution G.R.V.C.
Address 09-09 HAZEN STREET
EAST ELMHURST NEW YORK 11370

- B. List all defendants' names, positions, places of employment, and the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant No. 1 Name NEW YORK CITY/CITY OF NEW YORK Shield # _____
Where Currently Employed _____
Address _____

Defendant No. 2 Name DETECTIVE KAREN MACKAY Shield # 2267
 Where Currently Employed 63rd PRECINCT
 Address 1844 BROOKLYN AVENUE
BROOKLYN NEW YORK 112

Defendant No. 3 Name DETECTIVE JOSEPH CALABRESE Shield # 4148
 Where Currently Employed BROOKLYN SOUTH HOMICIDE SQUAD
 Address BROOKLYN NEW YORK 112

Defendant No. 4 Name DETECTIVE ANTHONY SEGUINOT Shield # 5058
 Where Currently Employed CRIME SCENE UNIT 63rd PRECINCT
 Address (BROOKLYN AVENUE) - 1844 BROOKLYN AVENUE
BROOKLYN NEW YORK 112

Defendant No. 5 Name POLICE OFFICER ANICIA JOSEPH Shield # 25000
 Where Currently Employed 63rd PRECINCT
 Address 1844 BROOKLYN AVENUE
BROOKLYN NEW YORK 112

II. Statement of Claim:

State as briefly as possible the facts of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

- A. In what institution did the events giving rise to your claim(s) occur?
CITY OF NEW YORK KINGS COUNTY BROOKLYN N.Y.
- B. Where in the institution did the events giving rise to your claim(s) occur?
1485 EAST 51st STREET BROOKLYN NEW YORK 11234
- C. What date and approximate time did the events giving rise to your claim(s) occur?
ON FEBRUARY 5, 2011 approximately 5:03 PM

D. Facts: About to enter home at 1485 East 51st Street when P.O. ANICIA JOSEPH and her partner forced me from premises and demanded my I.D. called for backup arrested me and took all my personal property took me to the 63rd Precinct, locked me into a small holding cage where I was interrogated without being Mirandized, intimidated, cajoled, coerced, deprived of sleep, food water, and requested phone call to obtain a lawyer, threatened when refused to speak with Detective who was questioning me against my will prior to being subject to same treatment by Detective Joseph Calabrese and Detective Karen Mackey from the corrupt Brooklyn South Homicide Squad and 63rd Precinct respectively. Deprived of right to counsel's assistance though requested was subjected continuous questioning from about 5:30 PM until about 4:50 PM the next day without sleep, water or food and forced to incriminate myself against my will. Malicious prosecution deprivation of rights Constitutional and Statutory rights to substantive due process of law, ineffective assistance of trial counsel, - deprivation of right to appear before and testify on own behalf before Grand Jury counsel waive said right without my knowledge or permission though he was informed that I wanted to exercise my absolute right to so appear and testify failed to adopt pro se motion to dismiss indictment, failure to do thorough investigation, prepare me adequately to testify or to obtain forensic expert witness for defense to straighten and prove case if defense self defense, minimized statement by ineffective advice, unfair trial, Prosecutor's misconduct tainted trial and verdict etc.

III. Injuries:

If you sustained injuries related to the events alleged above, describe them and state what medical treatment, if any, you required and received. Psychological and emotional trauma, depression anxiety attacks, recurring nightmares, sleeplessness, headaches, stress loss of appetite, feelings of hopelessness, fatigue, headaches, loss of possession because Police Precinct commander failure to turn over house key to designee to secure personal properties at home such as tools of construction multi-trades, clothings Electrical Appliances, power tools, Documents, Family heirloom, money, intellectual property etc.

IV. Exhaustion of Administrative Remedies:

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." Administrative remedies are also known as grievance procedures.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

Yes ☐ No ☒

D. FACTS: Continued -

Personal property at home was under control of the 63rd Precinct command detective(s)/warrant squad who took house key to premises and would not return them so belonging could be secured by my designee since I was in custody and unable to do so myself. Despite letter giving power of Attorney to two different person on different occasion addressed to Police Property Clerk Office (See attached) no response was given and request was ignored. These properties were taken away without due process of law in violation of my Substantive due process and Procedural due process rights. This is not the first time the state has deprived me of my liberty, they tried it again and it likely to happen again and I am presently being deprived of my liberty without regard for "traditional notions of fair play and decency in violation of my fundamental rights implicit in the concept of 'ordinary' ordered liberty" How can the police confiscate my property deny my representative access to them then now claim they have no idea what happened to them; where is the justice? This is not an isolated incident, I am being held unlawfully because I defended my life against my assailant who not only threatened my life twice but also brutally attacked me with the intent of carrying out his threat to beat me to death because I refused to hand over my money to him who in the process of assaulting me physically sustained a fatal wound by sliding suddenly towards me when I thrust out a knife to scare him off from beating me into unconsciousness, a person who I thought may have had a handgun because he threatened to blow my brains out; and a lawyer who ineffectively represented me during whole process, one who I seldomly see, get his advice or response to enquiries.

(2)

D. FACTS: Continued:

I was refused bail which prevented me from aiding adequately in my own defense by gathering evidence that would enable me to support my defense, information on my computer, bank records, emails, phone conversations and witnesses. I am presently being subjected to ridicule, threats, annoyance and in fear for my life, depressed and filled with anxiety because of malicious prosecution by the state prosecutor and their false witnesses and the other underhanded ways my rights are being trampled on; simply because I am a poor Blackman in America from the Caribbean with an accent. My Court appointed Attorney has no time to respond to my enquiries, ignores them, met with me for a few minutes for far too few times to thoroughly prepare me for testifying or to do needed investigation and secure the assistance of a forensic experts to help the defense case, an attorney who was available to guide, advise and adequately protect my rights or even informed me of them who failed to allow me to exercise my right to testify before the Grand Jury prior being indicted, who also refuse to adopt my motions to dismiss the indictment and who refuse to withdraw from representing me though I filed motion to have him reassigned and who continuously passes on information to the DA when I make known to him pertinent facts about the case so she could circumvent my defense.

If YES, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

N/A

B. Does the jail, prison or other correctional facility where your claim(s) arose have a grievance procedure?

Yes ____ No ____ Do Not Know ____

C. Does the grievance procedure at the jail, prison or other correctional facility where your claim(s) arose cover some or all of your claim(s)?

Yes ____ No ____ Do Not Know ____

If YES, which claim(s)?

D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose?

Yes ____ No ____

If NO, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

Yes ____ No ____

E. If you did file a grievance, about the events described in this complaint, where did you file the grievance?

1. Which claim(s) in this complaint did you grieve?

2. What was the result, if any?

3. What steps, if any, did you take to appeal that decision? Describe all efforts to appeal to the highest level of the grievance process.

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

2. If you did not file a grievance but informed any officials of your claim, state who you informed,

when and how, and their response, if any: _____

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies. _____

Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.

V. Relief:

State what you want the Court to do for you (including the amount of monetary compensation, if any, that you are seeking and the basis for such amount). Plaintiff seeks injunctive relief against state criminal prosecution on the grounds the prosecution is taken in bad faith and malice, because prosecutrix's disparaging comment on 25 year old conviction having no relevance to current charges, circumvented Plaintiff's right to appear before Grand Jury to testify on own behalf, failure of Felony complaint arraignment court of public appointed Attorney to apprise Plaintiff of his rights during arraignment. Court appointed attorney being ineffective rendering less than meaningful assistance, denial of fair trial due to constitutional and statutory violation, prosecutrix's misconduct inflammatory remarks and prejudicial comments and because New York being second or third highest in the nation with wrongful conviction make it more than likely not to receive a fair trial, as with first conviction and subsequent one under review see attached materials. Declaratory Judgment, for conviction obtained in violation of right to counsel, monetary compensation in amount of Eight Million Dollars for loss of personal properties household goods, clothings, trade construction electrical power tools, hand tool for carpentry, electrical masonry, plumbing, tiling, Cabinetry, HVAC, Painting, tools - household appliances, intellectual properties, unpublished book manuscript, collection of photographs of family members, deceased mother & father's pictures, research pictures subject to Physical Abuse while detained by detainee and staff member in violation of rights to be free from harm emotional, physical and psychological pain and sufferings; loss on construction materials and food supplies. etc.

VI. Previous lawsuits:

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes ☒ No ☐

On
these
claims

- B. If your answer to A is YES, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another sheet of paper, using the same format.)

1. Parties to the previous lawsuit:

Plaintiff ERROL IRVING

Defendants CITY OF NEW YORK, Police Dept, Employees of Police Department some in this action

2. Court (if federal court, name the district; if state court, name the county) _____

3. Docket or Index number 11 CIV. 9724 (PAE)

4. Name of Judge assigned to your case PAUL A. ENGELMAYER

5. Approximate date of filing lawsuit DECEMBER 30, 2011

6. Is the case still pending? Yes ☐ No ☒

If NO, give the approximate date of disposition Withdrew the petition without prejudice

7. What was the result of the case? (For example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?)

Upon Plaintiff's request (see attached) case was dismissed without prejudice

On
other
claims

- C. Have you filed other lawsuits in state or federal court otherwise relating to your imprisonment?
Yes ☐ No ☒

- D. If your answer to C is YES, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same format.)

1. Parties to the previous lawsuit:

Plaintiff NA

Defendants NA

2. Court (if federal court, name the district; if state court, name the county) _____

3. Docket or Index number _____

4. Name of Judge assigned to your case NA

5. Approximate date of filing lawsuit _____

6. Is the case still pending? Yes ☐ No ☒

If NO, give the approximate date of disposition _____

7. What was the result of the case? (For example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?) _____

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| |
|----------------------|
| USDC SDNY |
| DOCUMENT |
| ELECTRONICALLY FILED |
| DOC |
| DATE FILED: 5/1/12 |

ERROL IRVING,

Plaintiff,

-v-

NEW YORK CITY et al.,

Defendants.

11 Civ. 9724 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

Errol Irving, proceeding *pro se*, filed his complaint in this case on December 30, 2011, pursuant to 42 U.S.C. § 1983. Because plaintiffs' claims relate to still-ongoing criminal proceedings, this case was stayed on January 12, 2012. On April 18, 2012, the Court received a letter from Mr. Irving, in which he requests "to withdraw the petition without prejudice [so] that [he] may resubmit the petition at a later date." Mr. Irving's request is GRANTED. This case is hereby dismissed without prejudice.

SO ORDERED.

Dated: April 30, 2012
New York, New York

Paul A. Engelmayer
Paul A. Engelmayer
United States District Judge

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 12 day of November, 2012.

Signature of Plaintiff

Inmate Number

Institution Address

Emel Swing
4411 01791
G.R.V.C
09-09 HAZEN STREET
EAST ELMHURST N.Y. 11370

Note: All plaintiffs named in the caption of the complaint must date and sign the complaint and provide their inmate numbers and addresses.

I declare under penalty of perjury that on this 12 day of November, 2012, I am delivering this complaint to prison authorities to be mailed to the *Pro Se* Office of the United States District Court for the Southern District of New York.

Signature of Plaintiff:

Emel Swing

406

Police Property Clerk Office, Kings County
301 Gold Street
Brooklyn New York 11206

February 14, 2011

2/24/11

This is a power of Attorney giving Cecelia Echols the right to act as agent on my behalf to retrieve my personal property taken from me on Saturday February 5, 2011 by officer assigned or from the 63rd Police Precinct. I swear under penalty of perjury that these constitute the personal effects taken from my pockets, wallet, belt and head. The items are as listed:

- (1) One 12 mega pixel Nikon Digital Camera
- (2) One Metro PC LG Cell phone
- (3) One Tracphone
- (4) Four hundred Dollar Bills
- (5) One Fifty Dollar Bill
- (6) Four Ten Dollar Bills
- (7) One Five Dollar Bill
- (8) Three One Dollar Bills
- (9) Two Wallets a red and One Green in color
- (10) Social Security Card
- (11) Chase Business Debit Card
- (12) Class "D" Driver license
- (13) class "E" Driver license
- (14) Non-Driver license Identification
- (15) Photograph of Cecelia Echols
- (16) One knit hat with Blue, Yellow and Black in color
- (17) One pair of Reading Glass
- (18) One pair of Gloves Black in color
- (19) One Camera Case Black in color
- (20) One Old and New Testament Bible
- (21) One pair of Suede Shoes Brown in color
- (22) One Belt Black in color
- (23) One EBT Benefit Card with Picture
- (24) Two Set of House Keys for home & Job site

That some of these items were taken from me by two female officers who requested my identification when I tried entering my resident at 1485 East 51st Street Brooklyn NY 11234 placed in a knit cap and presented to the Desk Officer on duty at the Precinct and was to that they had not finished reviewing them, please see attached slip copy of Sgt. Gonzalez Shuld # 1366 who call and was so informed that my receipt would be faxed. That the red wallet contain four hundred Dollar Bills and one Fifty Dollar was handed over at the desk with contents of Green wallet in my presence that I was whisked away to a holding cell while these items were taken from me.

When I was being transferred to Central Booking and requested a copy of the vouchered items taken from me. I was told by the Desk Sergeant Gonzalez should #1366 that the vouchering process was not completed and that "Prisoner Pink Receipt for Property to be faxed." The name of the arresting Officer is Detective Mackey and to call 718-258-4401 for your property.

I requested the Sergeant to make a note of the information given to her in lieu of the receipt & affixed is a signed slip by the Sergeant to that effect.

Sworn to before this
18th day of February, 2011
by Engral Irving

Notary Public
Michael Sinclair

Engral Irving

MICHAEL SINCLAIR
Notary Public, State of New York
No. 01SI4953552
Qualified in Bronx County
Commission Expires Aug. 12, 2013

Prisoners PINK
Receipt for Property
to be FAXED

Arrest Officer
Det. Mackey
718-258-4401
Call for your property
make to Det.
1366.

3/16/11

POLICE PROPERTY CLERK OFFICE, KINGS COUNTY
301 GOLD STREET
BROOKLYN NEW YORK 11206

MARCH 16, 2011

This is a power of Attorney giving Christopher Clinton the right to act as my agent to retrieve or pick up my personal property taken from me on Saturday February 5, 2011 by officers assigned or from the 63rd Precinct located at 1844 Brooklyn Avenue. I swear under penalty of perjury that the following constitute the items or personal effects taken from my pockets, wallets or from my person. The items are as listed below:

- ① One 12 Mega Pixel Nikon Digital Camera
- ② One Metro PC LG Cell Phone
- ③ One Tracphone
- ④ Four (4) Hundred Dollar Bills
- ⑤ One (1) Fifty Dollar Bill
- ⑥ Four (4) Ten Dollar Bills
- ⑦ One (1) Five Dollar Bill
- ⑧ Three (3) One Dollar Bills
- ⑨ Two (2) Wallets one green and one red in color
- ⑩ Social Security Card
- ⑪ Chase Business Debit Card
- ⑫ Class "D" Drivers License
- ⑬ Class "E" Drivers License
- ⑭ None Drivers License I.D.
- ⑮ One Photograph of a friend
- ⑯ One Knit hat, blue, yellow and black in color
- ⑰ One pair reading glass brown in color
- ⑱ One pair of GLOVES, black in color
- ⑲ One Black Camera Case
- ⑳ One Old and New Testament Bible pocket size green cover
- ㉑ One Pair Sun shades, brown in color
- ㉒ One Black leather belt
- ㉓ One EBT Benefit Card with picture
- ㉔ Two sets of keys plus a single key in wallet
- ㉕ Rent receipts

Some of these items were taken from me by two female officers who requested my identification when I was about to enter the private house where I lived at 1485 E 51st Street, Brooklyn NY 11234. Other officers joined in who arrived on the scene, items were placed in my knit hat and presented to the Desk sergeant on duty about 6:15 pm or there about. When I requested the voucher

Errol Irving, 141 11 01791
O.B.C.C.
!@))

receipt, was told that they had not finished
vouchering them and that receipt would be
faxed, please see attached copy of Sgt.
Gonzalez, shield # 1366 who called and was
so informed that receipt would be faxed.
The red wallet contained the four hundred Dollar
Bills and one Fifty Dollar Bill was handed
over to the Officer working at the Desk when
I was taken before the Desk upon arriving at
the Precinct, I was whisked away to a holding
cell immediately after these items was taken from
me

When I was being transferred to Central Booking
I requested the receipt of vouchered items taken
was told by desk Sergeant Gonzalez shield #
1366 that the vouchering process was not completed
and that "Prisoner's Pink receipt for property
to be faxed" The name of the arresting officer is
Detective Mackey, was told to call 718 258 4401
for your property

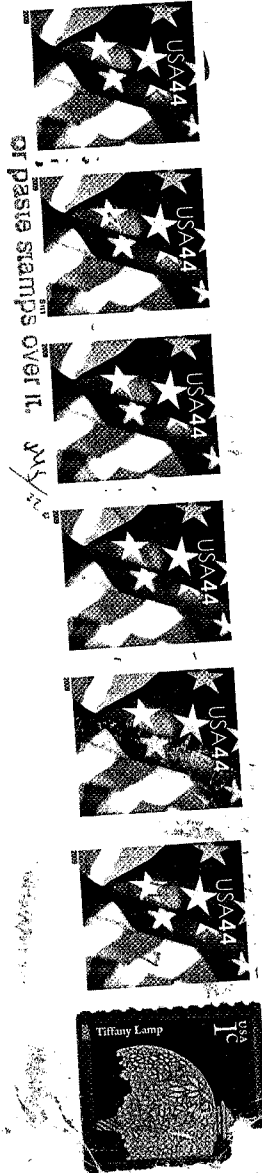
I requested the Sergeant to make a note of
the information given to her in lieu of the
receipt affixed in a signed slip by the
Sergeant to that effect

Sworn to before
this 16th day of MARCH
2011 by Errol Irving
Michael Sinclair

Errol Irving
[Signature]

MICHAEL SINCLAIR
Notary Public, State of New York
No. 01SI4953552
Qualified in Bronx County
Commission Expires Aug. 12, 2013

Legal Mail
11/11/79
G-1-V-C RND
11-11 HAZEN ST
EAST ELKHURST N.Y. 11370



or paste stamps over it. 11/11/79

PRO SE OFFICE
UNITED STATES DISTRICT COURT
Southern District of New York
Daniel Patrick Raymond United States Courthouse
500 PEARL STREET, Room 230
NEW YORK NEW YORK 10007

INDS
8d
INSU

LEGAL MAIL

LEGAL MAIL